

### **REMARKS**

The undersigned attorney wants to thank the Examiner for the courteous discussion on January 8, 2004. During the discussion the Examiner suggested that the evidentiary weight of the Declaration of Cheryl Galante could be strengthened by limiting claims 1, 5-9, 11-13, 16-18, 20-25, 27-44, 46-51, and 53-55 to aluminum-zirconium salts. Prior to this amendment, claims 1, 5-9, 11-13, 16-18, 20-25, 27-30, 33, 39, 43, 44, 46-51, and 53-55 required an antiperspirant salt selected from the group consisting of (a) aluminum salts having a certain formula, and (b) aluminum-zirconium salts having a certain formula. Applicants assume that for these claims the Examiner suggests limiting the claims to the aluminum-zirconium salts because the Declaration of Ms. Galante did not provide proof that she had made a composition including an aluminum salt having the formula in the claims. Although applicants do not necessarily agree with the Examiner's position, claims 1, 5-9, 11-13, 16-18, 20-25, 27-30, 33, 39, 43, 44, 46-51, and 53-55 have been amended to require the aluminum-zirconium salt.

Claims 31, 32, 34-38, and 40-42 are different from the claims discussed above because they do not require an antiperspirant salt selected from one of the two specific formulae. Rather, these claims merely require an "antiperspirant salt." The aluminum-zirconium salt in the compositions made by Ms. Galante is an embodiment of an antiperspirant salt. Thus, the Supplemental Declaration of Ms. Galante (discussed below) is sufficient evidence that the inventions covered by claims 31, 32, 34-38, and 40-42 were made prior to the parent filing date of Look et al. (US 2002/0041788) and the publication date of Banowski (WO 00/67712).

The Examiner also suggested that the Declaration of Cheryl Galante submitted with the Reply filed on August 6, 2003 could be strengthened by clarifying that (1) the antiperspirant products discussed in the Declaration included a container; (2) the products were intended to be used as antiperspirant products; and (3) the second (stripe) portion of the products met the "at least 15% of the application surface" requirement of, for example, claim 1. The enclosed Supplemental Declaration of Cheryl Galante addresses the points raised by the Examiner. Specifically, paragraph 2 states that the compositions were "within a container" and paragraph 4 states as follows:

The antiperspirant products referred to in paragraph 2 included an application surface suitable for contacting an underarm to apply the composition. That was the intended use for the antiperspirant product. The blue striped portion of the product comprised between 16% and 17% of the application surface, and the white surrounding (shell) portion comprised the remainder of the application surface. See the first notebook entry, upper line ("outer shell (83.55%)" and "inner stripe (16.45%)").

In view of the amendment of claims 1, 5-9, 11-13, 16-18, 20-25, 27-30, 33, 39, 43, 44, 46-51, and 53-55, the Supplemental Declaration of Cheryl Galante, and the explanation pertaining to claims 31, 32, 34-38, and 41-42, applicants submit that the Supplemental Declaration establishes that the invention covered by claims 1, 5-9, 11-13, 16-18, 20-25, 27-44, 46-51, and 53-55 were made before the filing date of Look and the publication date of Banowski. As a result, applicants request withdrawal of the 35 U.S.C. § 102(a) rejections based on Look and Banowski.

The Examiner rejected claim 57 under 35 U.S.C. § 103(a) over Look and claims 61 and 63-65 under 35 U.S.C. § 103(a) over Look in view of Iovanni. Applicants request that these rejections also be reconsidered and withdrawn.

Claim 57 relates to a product including a composition having two portions. Both portions include at least 10% of a hydrophilic vehicle. Thus, both portions are relatively hydrophilic. Both portions also include an antiperspirant salt. Claims 61, 63, and 64 also include these limitations, although claims 61, 63, and 64 specify that the hydrophilic vehicle includes a polyhydric alcohol. Claim 65 requires that both portions include at least 10% of a polyhydric alcohol and a dibenzylidene alditol and that at least one portion includes the antiperspirant salt.

The disclosure of two-phase antiperspirant stick products in Look is reasonably brief and for convenience is quoted below (from pages 6-7 of Look):

#### Stick Deodorants

[0077] The deodorant stick compositions of the invention are analogous to the lip balm and sunscreen compositions. However, deodorants use different waxes and active ingredients. Moreover, according to this aspect of the invention, a deodorant gel and "white" solid deodorant/antiperspirant can be used as the different compositions.

[0078] Typical compounds (high molecular weight hydrocarbons, alcohols, and acids) included in deodorant compositions include, but are not limited to, stearic acid, stearyl alcohol, propylene glycol, cyclomethicone, and any combination of any of the foregoing.

[0079] The deodorant compositions will also include one or more deodorants, such as (though not limited to) cocamidopropyl PG-dimonium chloride phosphate, abietic acid, aluminum citrate, aluminum PCA, azadirachta indicia extract, chlorophyllin-copper complex, eugenia jambolana extract, farnesol, fermented vegetable extract, ginger lily (*Hedychium spicatum*) extract, .alpha.-glucan-oligosaccharide, mauritia flexosa extract, octoxyglycerin, salvia miltiorrhiza extract, sandalwood (*Santalum album*) extract, sodium aluminum chlorohydroxy lactate, spondias amara extract, triethyl citrate, zinc phenolsulfonate, zinc ricinoleate, and any combination of any of the foregoing. They may also, or alternatively, contain one or more antiperspirants, including, but not limited to, allantoin-aluminum chlorohydrate, aluminum capryloyl hydrolyzed collagen, aluminum chlorohydrate GLY, aluminum chloride, aluminum chlorohydrate, aluminum chlorohydrate, aluminum PCA, aluminum sesquichlorohydrate, aluminum undecylenoyl collagen amino acids, aluminum zirconium pentachlorohydrate, aluminum zirconium tetrachlorohydrate, aluminum zirconium tetrachlorohydrate GLY, aluminum zirconium trichlorohydrate, aluminum zirconium pentachlorohydrate, sage (*Salvia officinalis*) extract, tormentil (*Potentilla erecta*) extract, zirconium chlorohydrate, and any combination of any of the foregoing.

[0080] Preferred minor components of the stick deodorant composition include a medicament; colorant; fragrance; and conditioner.

[0081] Suitable deodorant formulations for the first and second compositions are shown in Tables 8 and 9 below.

TABLE 8  
Deodorant Formulation 1

Component	% w/w
Stearic Acid	8
Ethanol	73.6
Propylene Glycol	10
Isopropyl Palmitate	5
Cocamidopropyl PG-dimonium Chloride Phosphate	1
Sodium Hydroxide (50%)	2.4

[0082]

TABLE 9  
Deodorant Formulation 1

Component	% ww
Cyclomethicone	45
Stearyl Alcohol	19
Dimethicone	5
Aluminum Zirconium Tetrachlorohydrate GLY	22
Talc	4
Mineral Oil	2
Hydrogenated Castor Oil	3
Fragrance	qs

Applicants underlined an important passage from Look -- that according to the “stick deodorant” aspect of the invention “a deodorant gel and ‘white’ solid deodorant/antiperspirant can be used as the different compositions.” The gel portion is a hydrophilic deodorant gel that is alcohol-based; see “Deodorant Formulation 1.” The white solid (antiperspirant) portion, in contrast, is hydrophobic and does not include any hydrophilic component; see “Deodorant Formulation 2.”

Thus, Look teaches a two-phase composition that requires a hydrophilic deodorant gel portion and a hydrophobic antiperspirant portion. Look does not suggest that both portions should be hydrophilic or that both portions should include an antiperspirant salt or that the hydrophobic antiperspirant portion should be changed to an alcohol-based antiperspirant portion. In fact, such a change would run counter to Look’s express goal of including a solid, wax-based (hydrophobic) antiperspirant portion with the hydrophilic gel deodorant portion.

Look also does not suggest, and in fact teaches away from, including an aluminum or aluminum-zirconium antiperspirant salt in the gel deodorant portion. The gel deodorant described by Look includes sodium stearate (stearic acid plus sodium hydroxide) as the gelling agent. It is well known in the antiperspirant field that the aluminum and aluminum-zirconium salts specified in the claims are incompatible with metal stearate gelling agents, which cause the salts to precipitate from the formulation. Only special types of salts, such as sodium aluminum chlorohydroxylactate, are generally used with metal stearate gel systems. (See Bell, US 2,970,083, of record.)

Claim 63 requires that at least one portion of the composition includes a polyhydric alcohol and a dibenzylidene alditol, which is a gelling agent for alcohols, but not oils. Claims 61 and 64-65 require that both portions of the composition include a polyhydric alcohol and a dibenzylidene alditol. The Examiner relies on Iovanni for a suggestion to use a polyhydric alcohol and a dibenzylidene alditol in the two portions of the deodorant composition described by Look. But this is a pure hindsight combination. Iovanni discloses one-phase clear gel antiperspirant sticks. Look expressly states that his two-phase composition includes a deodorant gel portion (which is hydrophilic in the example) and a white solid antiperspirant portion (which is hydrophobic in the example). There is absolutely nothing in Iovanni or Look that would suggest that one replace one or both portions of the Look composition with the Iovanni composition. Absent knowledge of the present invention, the skilled worker would have no reason to alter the Look composition in the manner proposed by the Examiner. To do so would completely alter the composition described by Look. For example, making both portions hydrophilic or including an antiperspirant salt in both portions or substituting a clear gel hydrophilic portion for the white solid hydrophobic portion would be well beyond anything contemplated by Look. Thus, a person of ordinary skill in the art would not be motivated to combine Iovanni and Look in the manner proposed by the Examiner.

The Examiner also rejected claims 57, 61, and 63-65 under 35 U.S.C. § 103(a) over Banowski in view of Iovanni. Applicants respectfully request that this rejection be reconsidered and withdrawn.

Banowski describes a two-phase stick composition in which both phases include a hydrophobic vehicle containing a liquid oil and a wax gelling agent. The "liquid oil" is not an alcohol and is not hydrophilic. The preferred liquid oil used by Banowski is silicone oils, for example, the cyclomethicone used in the examples on page 8. These are substantially different vehicles from the hydrophilic polyhydric alcohol-based vehicles described by Iovanni. A person of ordinary skill in the art would not be motivated to modify Banowski's two-phase stick by radically changing the oil-based hydrophobic vehicle to the polyhydric-alcohol-based hydrophilic vehicle described by Iovanni. This, again, is an improper, hindsight combination.

Applicant : Cheryl L. Galante et al.  
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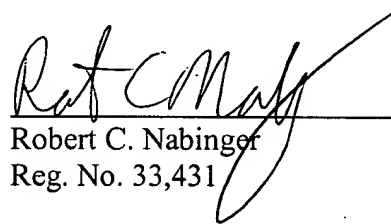
Absent knowledge of the present invention, there would be no reason to combine Iovanni and Banowski in the manner proposed by the Examiner.

Applicants respectfully submit that the claims are in condition for allowance, which is respectfully requested.

Enclosed is a \$110.00 check for the Petition for Extension of Time fee. Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

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